

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0305**

January 18, 2022

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human  
Services  
200 Independence Ave. SW  
Washington, D.C. 20201

Janet Woodcock, M.D.  
Acting Commissioner  
U.S. Food and Drug Administration  
10903 New Hampshire Ave.  
Silver Spring, M.D. 20993

Dear Secretary Becerra and Acting Commissioner Woodcock,

You must immediately rescind guidance issued by the U.S. Department of Health and Human Services (HHS) and the Food and Drug Administration (FDA) that indicates that race and ethnicity should be used as a factor in determining priority for COVID-19 treatments. Any guidance that emphasizes race in determining who should receive medical treatment is blatantly discriminatory and misguided.

On January 9, 2022, *Fox News* reported that FDA had issued guidance to healthcare providers which stated that “medical conditions or factors” such as “race or ethnicity” could be considered as a factor in determining priority for patients seeking the COVID-19 treatment sotrovimab.<sup>1</sup> I understand the need on the part of healthcare providers to prioritize treatment for individuals who suffer from comorbidities and are more prone to severe cases of COVID-19. However, race and ethnicity alone play no role in determining the severity of a patient’s COVID-19 symptoms. While societal conditions can influence an individual’s underlying health conditions, there is no evidence that suggests that people of color have genetic or other biological factors that make them more likely to be affected by COVID-19.<sup>2</sup> To suggest to healthcare providers that race and ethnicity should be a factor in determining eligibility for COVID-19 treatments is blatantly discriminatory and contrary to accepted science.

Unfortunately, states across the country have already seized on your Department’s discriminatory guidance and have issued their own guidance permitting healthcare providers to give preferential treatment to individuals based on race. In Utah, the state’s health department issued guidance which stated that individuals who are non-white or Hispanic should receive an additional two points when a healthcare provider is calculating the individual’s COVID-19 risk score.<sup>3</sup>

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<sup>1</sup> Kyle Morris, *Biden administration guidance prioritizes race in administering COVID drugs*, FOX NEWS, Jan. 9, 2022, <https://www.foxnews.com/politics/biden-administration-guidance-prioritizes-race-administering-covid-drugs>.

<sup>2</sup> Mayo Clinic, *Coronavirus infection by race: What’s behind the health disparities?*, (Aug. 13, 2020), <https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/coronavirus-infection-by-race/faq-20488802>.

<sup>3</sup> Ronny Reyes, *Utah, Minnesota face legal threats for using race as a factor to determine COVID treatment eligibility as non-whites were at greater risk for hospitalization*, DAILY MAIL, Jan. 13, 2022, <https://www.dailymail.co.uk/news/article-10396877/Utah-Minnesota-face-legal-threats-using-race-determine-COVID-treatment-eligibility.html>.

In New York, the state's health department released its own guidance to healthcare providers pertaining to the distribution of oral antiviral therapies. In its guidance, the New York Department of Health explicitly stated that "Non-white race or Hispanic/Latino ethnicity should be considered as a risk factor, as longstanding systemic health and social inequities have contributed to an increased risk of severe illness and death from COVID-19."<sup>4</sup>

The guidance that states have put forward prioritizing race and ethnicity in determining eligibility for COVID-19 treatments is a direct reaction to the flawed guidance your Department has issued. In late December, Minnesota acknowledged FDA's prioritization of race and ethnicity in allocating COVID-19 treatments. The Minnesota Department of Health's guidance for the allocation of monoclonal antibodies stated to healthcare providers that "FDA's acknowledgement means that race and ethnicity alone, apart from underlying health conditions, may be considered in determining eligibility for mAbs."<sup>5</sup>

The guidance issued by New York, Utah, and Minnesota are entirely misguided and appear to be a direct reaction to FDA's guidance indicating that race and ethnicity should be a consideration in allocating COVID-19 treatments. As I mentioned earlier, there is absolutely no science that suggests that racial minorities possess a genetic or biological factor that makes them more susceptible to severe cases of COVID-19. Any guidance published by FDA that emphasizes race as an important factor to consider in distributing COVID-19 treatments lacks scientific merit and must be withdrawn.

In order to address these concerns, please provide an immediate response outlining the steps HHS and FDA are taking to address the inaccuracies in FDA's guidance for the allocation and administration of COVID-19 treatments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Biggs", with a stylized flourish at the end.

Andy Biggs  
Member of Congress

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<sup>4</sup> Memorandum from N.Y. Dep't of Health, COVID-19 Oral Antiviral Treatments Authorized and Severe Shortage of Oral Antiviral and Monoclonal Antibody Treatment Products, (Dec. 27, 2021), [http://www.mssnyenews.org/wp-content/uploads/2021/12/122821\\_Notification\\_107774.pdf](http://www.mssnyenews.org/wp-content/uploads/2021/12/122821_Notification_107774.pdf).

<sup>5</sup> Minnesota Dep't of Health, Ethical Framework for Allocation of Monoclonal Antibodies during the COVID-19 Pandemic, (Jan. 12, 2022), <https://www.health.state.mn.us/diseases/coronavirus/hcp/mabethical.pdf>.